

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re:	Application No. 10/763,631)	<i>Confirmation No. 7718</i>
Filed:	January 23, 2004)	
)	
Applicants:	Andrew HALLIDAY et al.)	
Title:	CARTRIDGE FOR THE)	This Appellants' Brief on Appeal was electronically filed on August 4, 2008 using EFS-Web.
	PREPARATION OF BEVERAGES)	
Art Unit:	1761)	
Examiner:	Reginald L. ALEXANDER)	
)	
)	
Attorney Docket:	1410/67629)	
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Customer No.:	48940)	

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Commissioner for Patents
P. O. Box 1450
Alexandria, Virginia 22313-1450

APPELLANTS' BRIEF ON APPEAL UNDER 37 C.F.R. § 41.37

Sir:

Applicants hereby petition under 37 CFR § 1.136(a) for a three-month extension of time in the above-identified application, up to and including August 4, 2008, to make this reply timely.

Pursuant to 37 C.F.R. § 41.37, Applicants hereby respectfully submit the following Brief in support of their appeal, the due date for response being Monday, August 4, 2008, the first business day after Sunday, August 3, 2008.

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I. REAL PARTY IN INTEREST

Kraft Foods R & D, Inc.

II. RELATED APPEALS AND INTERFERENCES

None.

III. STATUS OF CLAIMS

Claims 1-22 are pending. Applicants appeal the final rejection of claims 1-15, 18, and 19. Claims 16-17 and 20-22 are allowed. Claims 1, 10, and 19 are the pending independent claims at issue in this appeal.

IV. STATUS OF AMENDMENTS

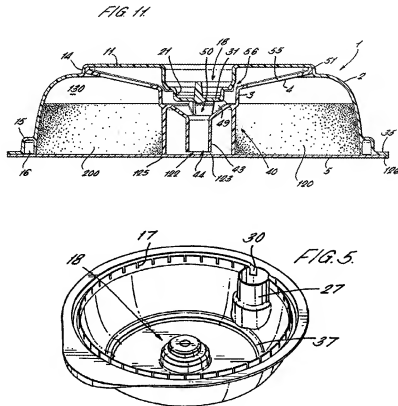
No amendments have been entered after the Office Action of October 3, 2007.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The summary of the claimed subject matter involved in this Appeal is broken into two sections: a first section providing a concise explanation of the subject matter of the independent claims at issue, and a second section providing a map of the independent claims to representative page and line numbers and figures in Applicants' specification.

A. Concise Explanation of Subject Matter Defined in the Independent Claims Involved in the Appeal

As best shown in FIGS. 5 and 11 of the present application (reproduced below), independent claim 1 defines a cartridge 1 containing one or more beverage ingredients and being formed from substantially air- and water-impermeable materials. (Specification, p. 2, lines 15-17.) The cartridge 1 includes an outer member 2 defining a storage chamber 120 in which is stored the one or more beverage ingredients. (*Id.*, lines 17-20.) The outer member 2 is sealed to a separate inner member 3 having a discharge spout 43 forming an outlet 122 for outflow of beverage formed from the one or more beverage ingredients. (*Id.*, lines 20-22 and p. 3, lines 19-21.) The inner member 3 forms a load-bearing member spanning between a closed end 11 of the housing and a lid 5 sealing an open end of the housing 2 and effective to withstand compressive forces during formation of a beverage from the one or more beverage ingredients under internal pressurization. (*Id.*, p. 2, lines 22-23 and p. 3, lines 7-18.) FIG. 5 illustrates the cartridge 1 (without the inner member 3) having the closed end 11 and the open end free of the lid or laminate 5. (*Id.*, p. 9, lines 14-29.)



Referring to FIGS. 5 and 11 above, independent claim 10 defines a cartridge 1 containing one or more beverage ingredients and being formed from substantially air- and water-impermeable materials. (Specification, p. 2, lines 15-17.) The cartridge 1 includes a housing 2 having a closed first end 11 and an open second end. (*Id.*, lines 17-20.) The housing 2 defines a storage chamber 120 in which is stored the one or more beverage ingredients, wherein the open second end of the housing 2 is sealed by a lid 5. (*Id.*, and p. 8, lines 22-29.) The cartridge further includes a load-bearing member 3 separate from the housing 2 and spanning between the closed first end 11 of the housing 2 and the lid 5. (*Id.*, p. 2, lines 22-23 and p. 3, lines 7-18.)

Referring again to FIGS. 5 and 11 above, independent claim 19 defines a cartridge 1 containing one or more beverage ingredients and being formed from substantially air- and

water-impermeable materials. (Specification, p. 2, lines 15-17.) The cartridge 1 includes an outer member 2 having a closed end 11 and an open end sealed with a lid 5. (*Id.*, lines 17-20 and p. 8, lines 22-29.) The outer member 2 defines a storage chamber 120 in which is stored the one or more beverage ingredients. (*Id.*, lines 17-20.) The cartridge 1 also includes an inner member 3 having a discharge spout 43 forming an outlet 122 for outflow of beverage formed from the one or more beverage ingredients. (*Id.*, lines 20-22 and p. 3, lines 19-21.) The inner member 3 forms a load-bearing member spanning between the closed end 11 of the outer member 2 and the lid 11. (*Id.*, p. 2, lines 22-23 and p. 3, lines 7-18.) The cartridge 1 also includes a flow path extending between the storage chamber 120 and the discharge spout 43 of the inner member 3 at a portion of the inner member 3 opposite the outlet 122. (*Id.*, p. 17, line 24 to p. 18, line 19.)

Independent claims 16, 20, and 22 are allowed (Office Action, October 3, 2007, p. 3) and, therefore, not included in the summary.

B. Map of Independent claims to Specification and Drawings

Independent Claim No.	Relevant Specification Pages and Line Numbers	Relevant Drawings
1	Specification, p. 2, lines 15-23; p. 3, lines 7-21; and p. 9, lines 14-29.	FIGS. 5 and 11
10	Specification, p. 2, lines 15-23; p. 3, lines 7-21; and p. 8, lines 22-29.	FIGS. 5 and 11
19	Specification, p. 2, lines 15-23; p. 3, lines 7-21; p. 8, lines 22-29; and p. 17, line 24 to p. 18, line 19.	FIGS. 5 and 11

It should be understood that this summary and map of the independent claims is only intended as a brief summary. Applicants do not represent or intend that the summary and

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map, or the accompanying references to the drawings and the specification, comprises an exhaustive presentation of the claims. As always, the claims are to be viewed and interpreted within the legal framework for claim construction, which may include the context of the entire specification as a whole.

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VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

- A. Are claims 1-15 and 18 obvious under 35 U.S.C § 103(a) over US 5,111,740 ("Klein") in view of US 3,336,857 ("Knodt")?
- B. Is claim 19 obvious under 35 U.S.C § 103(a) over Klein in view of Knodt?

VII. ARGUMENT

A. **Claims 1-15 And 18 Are Not Obvious Over Klein In View Of Knodt Because The Cited Art Fails To Disclose A Cartridge Having A Housing With One Open End And One Closed End**

Independent claim 1 defines, among other limitations, “the inner member forms a load-bearing member spanning between a closed end of the housing and a lid sealing an open end of the housing and effective to withstand compressive forces during formation of a beverage from the one or more beverage ingredients under internal pressurization.”

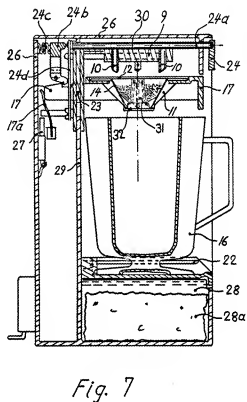
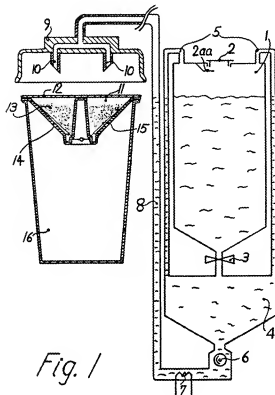
Independent claims 10 and 19 define similar limitations.

The combination of Klein and Knodt fail to disclose or suggest a cartridge having an inner member or housing having one closed end and one open end. Both cited references have a housing with two *open* ends. Indeed, the Office Action essentially admits such a fact, but attempts to assert that the Klein reference discloses more than what it actually describes and illustrates. (See Office Action, p. 3.)¹ As a result, the Office action has failed to provide a combination of references that disclose or suggest all claim limitations; therefore, the Office Action has not presented facts sufficient to establish a *prima facie* case of unpatentability due to obviousness as required by Section 2142 of the Manual of Patent Examining Procedure.

As illustrated in FIGS. 1 and 7 of Klein (reproduced below), this reference discloses a filter carrier 14 with an open end sealed by an upper closure 12. However, as shown in FIG. 7, the filter carrier 14 of Klein also has another open end that is sealed by a lower closure 32. In particular, Klein states “the upper closure 12 and the lower closure 32 and filter carrier 14 together hermetically enclose the flavour substance” (Klein, Col. 7, lines 18-20.) Thus, the

¹ The Office Action states: “Applicant contends that the closed end referred to by the examiner is really an open end sealed by a closure 32. Thus, the device has two open ends. While this may be the case, it does not preclude the fact that the presence of the closure creates what can be referred to as a closed end. This point is strengthened by the statement that the end is sealed by the closure.”

filter carrier 14 of Klein has *two open ends*, each closed by a separate closure 12 and 32. Klein does not describe a housing having the closed end recited in independent claims 1, 10, and 19.



In Klein, both the open upper end and the open lower end of the filter carrier 14 are used during operation of its filter unit 11. Specifically, the upper closure 12, covering the open upper end of the filter carrier 14, is pierced by the hot water outlets 10 of the shower head 9. The lower closure 32, covering the open lower end of the filter carrier 14, is torn by a moveable pushpin 31 to open "the way for the brew to exit from the bottom of the filter unit." (See Klein, col. 7, lines 24-31.) In other words, both ends of Klein are open during operation.

As shown in the Figures above, the housing body 14 of Klein's cartridge clearly does not have a closed end, but two open ends that are both sealed by the frangible closures or lids 12 and 32. Covering an opening of the housing 14 does not change the fact that the housing

body 14 of the Klein filter cartridge still has two open ends. It is irrelevant that Klein labels his lids as "closures," because Klein's housing body itself still has *two open ends*.

The claimed cartridge, on the other hand, defines two distinct structural ends: a closed end and an open end covered by a lid. As discussed above, Klein has a housing with the same structural features on both ends—that is, two open ends both covered with lids. The Office Action is attempting to equate identical structural ends in Klein's housing into the two different structural features defined by the claims. There is no support in the art of record or any rationale provided for making such an assumption contrary to the disclosures of Klein.

Knodt does not overcome the deficiencies of Klein. As shown in FIG. 4 of Knodt (reproduced below), this reference also does not disclose a housing or outer member having a closed first end and an open second end. Knodt also discloses a cartridge container 126 having both an open first end and an open second end. More specifically, the upper end of the cartridge container 126 of Knodt has a spreader plate 127 having openings 128 therein, and the lower end of the cartridge container 126 has a bottom portion 126 provided with a plurality of openings 137. (Knodt, Col. 4, lines 57-69.)

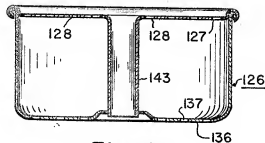


Fig. 4

Given that both Klein and Knodt fail to disclose housings or cartridge containers having both a closed end and an open end, their proposed combination also will not have such a housing.

B. Claim 19 Is Not Obvious Over Klein In View Of Knodt Because The Cited Art Fails To Disclose A Cartridge Having One Open End And One Closed End AND Fails To Disclose A Beverage Flow Path Between The Storage Chamber And Discharge Spout Of An Inner Member At A Portion Of The Inner Member Opposite The Outlet

Independent claim 19 defines both “the inner member form[ing] a load-bearing member spanning between the closed end of the outer member and the lid” and “a flow path extend [ing] between the storage chamber and the discharge spout of the inner member at a portion of the inner member opposite the outlet.” The proposed combination of Klein and Knodt fail to disclose both these limitations.

Similar to the discussion above in Section A, the proposed combination fails to disclose or suggest the inner member spanning between a closed end of the housing and an open end of the housing covered by a lid. The discussion from Section A is incorporated herein in its entirety.

However, Klein also does not disclose a flow path that extends between the storage chamber and the discharge spout of the inner member at a portion of the inner member opposite the outlet. Instead, the flow path that extends between the interior of the filter carrier 14 and the outlet is through openings positioned at a portion of the central member of the filter carrier 14 adjacent the outlet of the central member. Knodt also fails to disclose such a flow path.

VIII. CLAIMS APPENDIX

Claim 1 (Previously Presented): A cartridge containing one or more beverage ingredients and being formed from substantially air- and water-impermeable materials, the cartridge comprising an outer member defining a storage chamber in which is stored the one or more beverage ingredients, the outer member being sealed to a separate inner member having a discharge spout forming an outlet for outflow of beverage formed from the one or more beverage ingredients, the inner member forms a load-bearing member spanning between a closed end of the housing and a lid sealing an open end of the housing and effective to withstand compressive forces during formation of a beverage from the one or more beverage ingredients under internal pressurization.

Claim 2 (Previously Presented): A cartridge as claimed in claim 1 wherein the inner member and outer member are conjoined during assembly of the cartridge.

Claim 3 (Original): A cartridge as claimed in claim 2 further comprising a filter conjoined to the inner member.

Claim 4 (Original): A cartridge as claimed in claim 3 wherein the inner member forms a load-bearing member of sufficient rigidity such that the cartridge can withstand a compressive load of greater than 130N.

Claim 5 (Original): A cartridge as claimed in claim 4 wherein the load-bearing member is of sufficient rigidity such that the cartridge can withstand a compressive force of greater than 200N.

Claim 6 (Original): A cartridge as claimed in claim 5 wherein the load-bearing member is of sufficient rigidity such that the load-bearing member can withstand a compressive force of greater than 130N.

Claim 7 (Original): A cartridge as claimed in claim 6 wherein the inner member is formed from polypropylene.

Claim 8 (Original): A cartridge as claimed in claim 7 wherein the outer member and/or inner member are formed from a biodegradable polymer.

Claim 9 (Original): A cartridge as claimed in claim 8 wherein the inner member and discharge spout are formed as one piece.

Claim 10 (Previously Presented): A cartridge containing one or more beverage ingredients and being formed from substantially air- and water-impermeable materials, the cartridge comprising a housing having a closed first end and an open second end, the housing defining a storage chamber in which is stored the one or more beverage ingredients, wherein the open second end of the housing is sealed by a lid, the cartridge further comprising a load-bearing member separate from the housing and spanning between the closed first end of the housing and the lid.

Claim 11 (Original): A cartridge as claimed in claim 10 wherein the load-bearing member comprises a discharge spout forming an outlet for outflow of beverage formed from the one or more beverage ingredients.

Claim 12 (Original): A cartridge as claimed in claim 11 wherein the load-bearing member is located at or near a center of the cartridge.

Claim 13 (Original): A cartridge as claimed in claim 12 wherein the load-bearing member is of sufficient rigidity such that the cartridge can withstand a compressive load of greater than 130N.

Claim 14 (Original): A cartridge as claimed in claim 13 wherein the load-bearing member is of sufficient rigidity such that the cartridge can withstand a compressive force of greater than 200N.

Claim 15 (Original): A cartridge as claimed in claim 14 wherein the load-bearing member is of sufficient rigidity such that the load-bearing member can withstand a compressive force of greater than 130N.

Claim 16 (Allowed)

Claim 17 (Allowed)

Claim 18 (Previously Presented): A cartridge as claimed in claim 3 wherein the inner member spaces the filter from the outer member.

Claim 19 (Previously Presented): A cartridge containing one or more beverage ingredients and being formed from substantially air- and water-impermeable materials, the cartridge comprising an outer member having a closed end and an open end sealed with a lid, the outer member defining a storage chamber in which is stored the one or more beverage ingredients and an inner member having a discharge spout forming an outlet for outflow of beverage formed from the one or more beverage ingredients, the inner member forms a load-bearing member spanning between the closed end of the outer member and the lid and a flow

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path extends between the storage chamber and the discharge spout of the inner member at a portion of the inner member opposite the outlet.

Claim 20 (Allowed)

Claim 21 (Allowed)

Claim 22 (Allowed)

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IX. EVIDENCE APPENDIX

None.

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X. RELATED PROCEEDINGS APPENDIX

None.

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XI. CONCLUSION

In view of the foregoing discussion, Applicants respectfully request reversal of the rejected, pending claims.

Respectfully submitted,

FITCH, EVEN, TABIN & FLANNERY

Dated: August 4, 2008

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